

PATENT/Docket No. PC27453A
Appl. No. 10/706255
Filing Date: November 12, 2003
Amdt. dated February 13, 2007
Reply to Office action of November 14, 2006

REMARKS/ARGUMENTS

Claim Objections

The examiner has objected to claims 12 and 13 because they depend from a withdrawn claim. Claims 12 and 13 are hereby amended to correct this informality. Withdrawal of this objection is respectfully requested. In addition, two new claims 16 and 17 are presented. The claims do not add new matter.

35 U.S.C. §102(b) Teagarden et al. (US Publication 2002/0110561)

Claims 1-8 and 12-13 are rejected under 35 U.S.C. § 102(b) as being allegedly unpatentable over Teagarden et al. (US Publication 2002/0110561). In making this rejection the examiner states "Comprising leaves the claims open for inclusion of unspecified ingredients even in major amounts. See MPEP 2111.03. Therefore, the reference is deemed to anticipate the instant claims above."

Claim 1 of the present application reads:

1. A composition comprising:
 - (a) one to three bioactive agents; and
 - (b) a vehicle comprising:
 - (i) a modified liquid carrier, and
 - (ii) an un-modified liquid carrier

wherein the ratio by volume of the modified liquid carrier to the un-modified liquid carrier is between 0.00001:99.99999 to less than 0.01:99.99, that provide the composition with predictable sustained-release properties and wherein immediately after manufacture of the composition, said composition can be administered to a host such that the one to three bioactive agents is released to the host on a sustained basis.

The ratio of modified oil to non-modified oil in Teagarden et al. is described on page 4 paragraph 55 as follows:

A preferred embodiment of the present invention is where the delivery vehicle is the combination of a modified unsaturated oil with a fully saturated oil or non-oxidizing vehicle. In even more preferred embodiments, the modified unsaturated

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oil is a substantially peroxidized unsaturated oil vehicle. For this embodiment, the ratio of modified unsaturated oil to saturated, non-oxidizing oil is from about from about 0.01:99.99 to about 90:10 (v/v), the total amount of each being 100 percent, with particular reference to the range from about 10:90 to about 25:75 (v/v), and most particularly from about 10:90 to about 20:80 (v/v).

The examples in Teagarden et al. have rather high ratios of modified oil to non-modified oil. The ratios are shown in the following table:

	Ratio Modified to Non-modified Oil (v/v)
Example 1	10:90
Example 2	20:80
Example 3	20:80
Example 4	20:80
Example 5	5:95
Example 6	40:60
Example 7	15:85
Example 8	100 % Modified

Teagarden et al. provides no other teaching relating to the ratio of modified to non-modified oil. Accordingly, Teagarden et al. provides no teaching of the key element of the present invention, that is, a composition in which "the ratio by volume of the modified liquid carrier to the un-modified liquid carrier is between 0.00001:99.99999 to less than 0.01:99.99..."

A rejection under 35 U.S.C. §102(b) relates to the teaching of a reference. It is respectfully submitted that the term "comprising" cannot add a teaching that is not otherwise present in a reference. A reference anticipates a claim, under 35 U.S.C. 102, if it contains all material elements of the claim (In re Marshall (CCPA 1978) 198 USPQ 344, 346). As set forth above, Teagarden et al. provides no teaching of the small ratio by volume of the modified liquid carrier to the un-modified liquid carrier that is claimed in the present invention. Since Teagarden et al. does not teach the ratio by volume of the

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modified liquid carrier to the un-modified liquid carrier of the present invention, it cannot anticipate the present invention. Reconsideration and withdrawal of this rejection is respectfully requested.

In view of these remarks and amendments, Applicants respectfully request reconsideration of and withdrawal of all rejections and objections. Allowance of the present application is earnestly requested.

Respectfully submitted,

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